



Rule Fact Sheet

January 7, 2004
(Updated March 3, 2004)

Emergency Adoption of Permit by Rule #04-(APCB)

Update since Adoption on January 7, 2004

The emergency rule was filed with the secretary of state on January 8, 2004, and is effective for 90 days (April 7, 2004). The rule if readopted will be filed with the secretary of state on April 7 for an additional 90 days. During the time that the emergency rule is in effect, a rulemaking is underway to adopt provisions to implement 326 IAC 2-10-1.

Overview

Would adopt as an emergency rule, language consistent with 326 IAC 2-10-2, 326 IAC 2-10-3, 326 IAC 2-10-4, 326 IAC 2-10-5 and 326 IAC 2-10-6 for the purpose of implementing 326 IAC 2-10-1, Permit by Rule (Limiting potential to emit).

Affected Persons

Sources that are currently covered by a permit by rule under 326 IAC 2-10. These are sources that limit their actual emissions to below major source levels and that do not have a control device as an integral part of their process.

Reason for Emergency Rule

Due to a lack of clarity concerning calculation of the expiration date under IC 13-14-9.5-2 (the "sunset statute"), sections 2 through 6 of the Permit by Rule, which were adopted in 1996, expired not on January 1, 2004, but on January 1, 2003.

326 IAC 2-10, Permit by Rule, was developed to minimize the regulatory burden and cost for both the regulated community and the department in the implementation of the permit requirements of Title V of the Clean Air Act Amendments of 1990 that resulted in development of the Part 70 Permit Program. The rule is subject to the "sunset statute". All rules adopted after December 31, 1995, expire on January first of the seventh year after the year in which the rule takes effect. Section 1 of the Permit

by Rule was amended in 1998 and does not expire until January 1, 2005; it provides that a source that limits its potential to emit is deemed to hold a permit provided it meets certain conditions described in the implementing sections.

Under the emergency rulemaking statute (IC4-22-37.1(b)) the air pollution control board may adopt an emergency rule to comply with a deadline required by federal law provided certain conditions are met. No public hearing is required prior to adoption by the board. Following adoption, the emergency rule is submitted to the Legislative Services Agency for assignment of a document control number. The emergency rule is then filed with the secretary of state and is effective for a period of 90 days. An emergency rule may be extended for two extension periods. The emergency rulemaking process is described in more detail under the "Emergency Rulemaking Process" section of this Fact Sheet.

Economic Impact of the Emergency Rule

If the emergency rule is adopted, there will be no economic impact on citizens, sources, or the department.

Benefits of the Emergency Rule

If the emergency rule is not readopted, sources now covered by a permit under 326 IAC 2-10-1 will lack clarity concerning the conditions that must be met to demonstrate compliance with 326 IAC 2-10-1.

These sources may elect to obtain a permit under one of the federally approved permit programs or state permit programs. They would be required to obtain the applicable permit and pay the fees associated with the applicable permit program. There is no permit fee associated with the permit by rule under 326 IAC 2-10. In the absence of 326 IAC 2-10 sources that are now covered by 326 IAC 2-10 will need a permit under one of the following programs: 326 IAC 2-6.1, Minor Source Operating Permit Program; 326 IAC 2-7, Part 70 Permit Program; 326 IAC 2-8, Federally Enforceable State Operating Permit Program; or 326 IAC 2-9, Source Specific Operating Agreements, as applicable. There are fees associated with each of these permit programs.

Description of the Rulemaking Project

In 1996 the Indiana Legislature provided for the expiration of certain administrative rules unless expressly readopted under IC 13-14-9.5 (the “sunset statute”). 326 IAC 2-10, permit by rule, is subject to IC 13-14-9.5. All rules adopted after December 31, 1995, expire on January first of the seventh year after the year in which the rule takes effect.

IC 13-14-9.5-4(a) provides that the department or board that has rulemaking authority under Title 13 may readopt all rules subject to expiration under one rule that lists all rules that are readopted by their titles and subtitles only.

IC 13-14-9.5-4(b) provides that if a person submits to the department or board that has rulemaking authority under Title 13, a written request and a basis for the request during the first comment period that a particular rule be readopted separately from the readoption rule described in subsection (a), the department or board must readopt the rule separately from the readoption rule and follow the procedure for adoption of administrative rules under IC 13-14-9 with respect to the rule.

326 IAC 2-10 was first noticed for readoption in the first sunset rulemaking (LSA #00-44). Because a request and a basis for the request were submitted during the first comment period for 326 IAC 2-10, this rule was not readopted in the first sunset rulemaking. IDEM began a separate rulemaking to readopt 326 IAC 2-10 in the summer of 2003. IDEM received no comments specific to 326 IAC 2-10 in response to the first and second notices of public comment period, nor any comments at the first public hearing on December 3, 2003. IDEM is now

withdrawing that rulemaking because it is moot since the rule actually expired on January 1, 2003. A new rulemaking to adopt provisions to implement 326 IAC 2-10-1 will commence with a Section 7 Notice to be published in the Indiana Register on January 1, 2004. This emergency rulemaking will allow sources to continue to be permitted by rule until provisions implementing 326 IAC 2-10-1 are adopted.

326 IAC 2-10 applies to sources that limit their actual emissions below major source levels and do not have a control device as an integral part of their process. A source that meets the requirements of the rule is considered to be permitted under the rule. 326 IAC 2-10, sections 1 through 6, was adopted in 1996; section 1 of that rule was amended in 1998 and will expire on January 1, 2005. Sections 2 through 6 expired on January 1, 2003.

The number of sources that are covered by this rule is not known since the rule provides that as long as a source can demonstrate compliance with the requirements of the rule, upon request, the source is covered by the permit by rule and is not required to notify or file any report with the department.

Scheduled Hearings

Pursuant to IC 4-22-2-27.1(b), no public hearing is required for the adoption of emergency rules.

Consistency with Federal Requirements

326 IAC 2-10, permit by rule, is not required by federal law and is not approved as part of the state implementation plan. However, in the absence of 326 IAC 2-10, sources now permitted under this rule would be subject to one of the federally approved permit programs or state permit programs and would be required to obtain the applicable permit and pay the associated fees.

Emergency Rulemaking Process

IC 4-22-2-37.1(b) (14) provides that the air pollution control board may adopt an emergency.

IC 4-22-2-37.1(c) provides that after the rule is adopted, IDEM shall submit the rule to the publisher of the Indiana Register for the assignment of a document control number.

IC 4-22-2-37.1(d) provides that after the document control number has been assigned, IDEM shall

submit the rule to the secretary of state for filing.

IC 4-22-2-37.1(e) provides that the secretary of state shall accept the rule for filing and file stamp and indicate the date and time that the rule is accepted for filing.

IC 4-22-2-37.1(f)(2) provides that the emergency rule adopted under subsection (a) takes effect on the date and time that the rule is accepted for filing under subsection (e).

IC 4-22-2-37.1(g) provides that a rule adopted under subsection (a) expires no later than 90 days after the rule is accepted for filing; a rule adopted under subsection (a)(14) may be extended for 2 extension periods.

IDEM Contact

Additional information regarding this rulemaking action can be obtained from Patricia Troth, Rule Development Section, Office of Air Quality, (317) 233-5681 or (800) 451-6027 (in Indiana).